



## **Case Summary**

Victor Pinkston (“Victor”) appeals his conviction for Operating Motor Vehicle While Privileges are Forfeited for Life, a Class C felony, and Criminal Recklessness as a Class A misdemeanor. Specifically, he contends that the trial court erred in refusing to instruct the jury on the defense of extreme emergency. Because the evidence does not support the instruction of extreme emergency, the trial court did not abuse its discretion in refusing to give it. We therefore affirm the trial court.

## **Facts and Procedural History**

On October 6, 2005, Jacqueline Pinkston (“Jacqueline”) called her daughter, Jacqueline Fuqua (“Fuqua”), and asked Fuqua to return her Cadillac, which was parked at Fuqua’s house. Fuqua’s fiancé, Ephram Lincey (“Lincey”), drove the red Cadillac, and Fuqua drove her car, a white Plymouth, to Jacqueline’s house on Cottage Avenue in Indianapolis. When the pair arrived at Jacqueline’s house, Jacqueline and her husband, Victor, were sitting on the front porch. According to the record, Fuqua and Lincey did not have a good relationship with Victor. As Fuqua handed the car keys to Jacqueline, Victor grabbed the keys from Jacqueline. At the time, Victor’s driving privileges had been forfeited for life.

Victor and Lincey then got into an argument about the car keys. Believing Victor to be acting irrationally, Fuqua offered to take Jacqueline to her house. When Jacqueline, Fuqua, and Lincey started walking off the porch, Victor grabbed a pitchfork, began “ranting and raving,” and went after Lincey. Tr. p. 75. As Fuqua was trying to help Jacqueline to her Plymouth, Victor hit the car with the pitchfork. Lincey asked Victor to

put down the pitchfork, but Victor responded by threatening to kill Lincey with the pitchfork. After Lincey was able to disarm Victor, Victor got into the Cadillac and rammed it into the back of the Plymouth as Jacqueline was trying to get inside, causing her to fall to the ground. Again, Victor rammed the Cadillac into the back of the Plymouth, this time causing Jacqueline to slide underneath the car and injure her leg. Fuqua and Lincey helped Jacqueline to safety. Victor then drove the Cadillac through a field across the street and returned, ramming it into the side of the Plymouth two times. Lincey stepped in front of the Plymouth and asked Victor to stop ramming into it. Victor attempted to run over Lincey, but Lincey was able to move out of the way, and Victor ran into the front of the Plymouth instead. Victor then drove to the field, turned around, and returned, hitting the Plymouth yet another time.

In the meantime, Indianapolis Police Department Officer Brad Beaton was dispatched to the area on a report of a disturbance. As Officer Beaton came upon the scene, he observed “a red vehicle deliberately ram a white vehicle.” *Id.* at 157. Officer Beaton stopped, and Victor exited the red vehicle, which was a Cadillac. Victor was “waving his hands” and “in a rage of some sort.” *Id.* at 159. As a result, Officer Beaton put Victor on the ground and handcuffed him. Victor attempted to stand up and run on three different occasions while Officer Beaton was questioning possible witnesses, forcing Officer Beaton to spray Victor with chemical spray.

Thereafter, the State charged Victor with Count I: Operating Motor Vehicle While Privileges are Forfeited for Life, a Class C felony; Count II: Criminal Recklessness as a Class D felony; Count III: Criminal Mischief as a Class A misdemeanor; Count IV:

Criminal Recklessness as a Class A misdemeanor; Count V: Domestic Battery as a Class A misdemeanor; and Count VI: Battery as a Class A misdemeanor. A jury trial ensued. At the conclusion of the State's case-in-chief, Victor moved for a directed verdict on Count III, which the trial court granted. At the conclusion of the evidence, Victor tendered jury instructions for the defenses of extreme emergency and necessity as well as self-defense. Believing that the evidence did not support instructions for the defenses of extreme emergency and necessity, the trial court refused to give them to the jury. The court said that defense counsel could read those instructions to the jury if he so wished.<sup>1</sup> The trial court did, however, instruct the jury on self-defense. Following trial, the jury found Victor guilty of Count I: Operating Motor Vehicle While Privileges are Forfeited for Life, a Class C felony,<sup>2</sup> and Count IV: Criminal Recklessness as a Class A misdemeanor<sup>3</sup> and not guilty of Counts II, V, and VI. The trial court sentenced Victor to four years on Count I and one year on Count IV, to be served concurrently. Victor now appeals.

### **Discussion and Decision**

Victor contends that the trial court erred in refusing to give his tendered instruction on the defense of extreme emergency as it relates to the charge of Operating

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<sup>1</sup> In fact, the record shows that during closing argument, defense counsel read Victor's tendered instruction on extreme emergency to the jury. *See* Tr. p. 248.

<sup>2</sup> Ind. Code § 9-30-10-17.

<sup>3</sup> Ind. Code § 35-42-2-2 (b), (c)(1).

Motor Vehicle While Privileges are Forfeited for Life.<sup>4</sup> “The purpose of an instruction is to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict.” *Davidson v. State*, 849 N.E.2d 591, 593 (Ind. 2006) (quoting *Overstreet v. State*, 783 N.E.2d 1140, 1163 (Ind. 2003)). Instruction of the jury is generally within the discretion of the trial court and is reviewed only for an abuse of that discretion. *Ray v. State*, 846 N.E.2d 1064, 1066 (Ind. Ct. App. 2006), *trans. denied*. A trial court erroneously refuses a tendered instruction if (1) the instruction correctly states the law; (2) evidence supports the instruction; and (3) no other instructions cover the substance of the tendered instruction. *Davidson*, 849 N.E.2d at 593.

The only issue on appeal is whether the evidence supports Victor’s tendered instruction on extreme emergency. Indiana Code § 9-30-10-18 addresses the defense of extreme emergency and provides as follows:

In a criminal action brought under section 16 or 17 of this chapter, it is a defense that the operation of a motor vehicle was necessary to save life or limb in an extreme emergency. The defendant must bear the burden of proof by a preponderance of the evidence to establish this defense.

Victor’s tendered instruction on extreme emergency provided:

It is a defense that the operation of a motor vehicle was necessary to save life or limb in an extreme emergency. The defendant must bear the burden of proof by a preponderance of the evidence to establish this defense.

Appellant’s App. p. 63 (capitalization omitted). Victor argues that the evidence supports his tendered instruction because his “statements in his own defense [at trial] centered

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<sup>4</sup> Victor also contends that the trial court erred in refusing to give his tendered instruction on the defense of necessity; however, his argument focuses on the extreme emergency instruction. Therefore, so do we.

upon his belief that he and his wife were under attack during the visit by Fuqua and Lincey.” Appellant’s Br. p. 9. The uncontroverted evidence shows that Victor rammed the Cadillac into Fuqua’s Plymouth on multiple occasions and, in fact, was still ramming the Cadillac into the Plymouth when the police arrived on the scene. There is simply no connection between Victor’s act of repeatedly ramming the Cadillac into Fuqua’s Plymouth and his claim that he was under attack. If Victor was operating the Cadillac “to save life or limb in an extreme emergency,” then nothing prevented him from leaving the scene in the Cadillac. Instead, Victor repeatedly rammed the Cadillac into Fuqua’s Plymouth. Because the evidence does not support the instruction of extreme emergency, the trial court did not abuse its discretion in refusing to give it.

Affirmed.

BAILEY, J., and BARNES, J., concur.